

COPY



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

VIA CERTIFIED MAIL

Article No. 7003-2260-0001-7779-9714

MAR 16 2005

Ref:8Enf-L

Jeff Carr
Garfield Estates Vineyard and Winery
Mt. Garfield Winery Corp.
7891 E. 26th Ave.
Denver, CO 80238

Dear Mr. Carr:

Enclosed is an administrative complaint, seeking penalties for violations of the Worker Protection Standard ("WPS") pursuant to the Federal Insecticide Fungicide and Rodenticide Act, ("FIFRA"), 7 U.S.C. §§ 136 to 136y. On July 15, 2003, EPA sent a Notice of Warning to your business identifying various WPS violations discovered in 2003. In 2004, an EPA inspector noted continuing violations at your establishment. This Complaint has been filed because of continuing WPS violations at your establishment.

If you or a representative would like to discuss the complaint or any of the other documents enclosed in this letter, please call me at 303-312-6924.

Sincerely,

A handwritten signature in black ink, appearing to read "Eduardo Quintana".

Eduardo Quintana,
Enforcement Attorney

Enclosures:

1. Complaint
2. CROP
3. FIFRA ERP
4. FIFRA WPS Policy
5. SBREFA Information Sheet

cc. David Golden, 8Enf-T



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No. **FIFRA-08-2005-0002**

2005 MAR 16 AM 8:36

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:)

Mt. Garfield Winery Corporation)
d.b.a. Garfield Estates Vineyard)
and Winery)

3572 G Road)
Palisade, CO 81526,)

Respondent)

**PENALTY COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

INTRODUCTION (JURISDICTION)

1. This civil administrative enforcement action is authorized by Congress in section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. section 136l(a). The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits ("Rules of Practice")," 40 C.F.R. part 22, a copy of which is enclosed.

2. The undersigned EPA officials have been properly delegated the authority to issue this action.

3. EPA alleges that Respondent has violated FIFRA by using registered pesticides in a manner inconsistent with their labels, and proposes the assessment of a civil penalty, as more fully explained below. FIFRA authorizes the assessment of a civil penalty for violations of the Act. 7 U.S.C. section 136l(a).

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to a public hearing before an administrative law judge (ALJ) to disagree with (1) any fact stated (alleged) by EPA in the complaint, or (2) the appropriateness of the proposed penalty.

5. To disagree with the complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (999 18th St; Suite 300; Denver, Colorado 80202) within 30 days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see

section 22.15 of the Rules of Practice for a complete description of what must be in your answer. **FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.**

QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by paying the specific penalty (\$3,600) proposed in the complaint. Such payment need not contain any response to, or admission of, the allegations in the complaint. Such payment constitutes a waiver of respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process. This payment shall be made by remitting a cashier's or certified check for that amount, payable to "Treasurer, United States of America," to:

U. S. EPA, Region 8
(Regional Hearing Clerk)
Mellon Bank
P. O. Box 360859M
Pittsburgh, PA 15251

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Eduardo Quintana at 1-800- 227-8917; extension 6924 or the address below. *Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.*

GENERAL ALLEGATIONS

The following general allegations apply to each count of this complaint:

8. Respondent, Mt. Garfield Winery Corporation, is incorporated in the State of Colorado.

9. At all times pertinent to this Complaint, Respondent was doing business under the trade name of Garfield Estates Vineyard and Winery.

10. Respondent is a "person" within the meaning of section 2(s) of FIFRA, and therefore subject to the requirements of the statute and/or regulations.

11. Respondent is and at all times pertinent to this Complaint has been a "private applicator" within the meaning of section 2(e)(2) of FIFRA.

12. At all times pertinent to this Complaint, Respondent grew grapes at a vineyard located at 3572 G Road, Palisade, Colorado. Respondent also operated a winery at the same location.

13. At all times pertinent to this Complaint, Respondent hired "workers" and "handlers," within the meaning of 40 C.F.R. section 170.3, to perform activities related to the outdoor production of agricultural plants, specifically, grapes.

14. Respondent's vineyard was at all times pertinent to this Complaint a "farm," as that term is defined by 40 C.F.R. section 170.3.

15. At all times pertinent to this Complaint, Respondent was an "agricultural employer" within the meaning of 40 C.F.R. section 170.3.

16. An authorized EPA employee ("inspector") conducted an inspection at Respondent's farm with the consent of Respondent on June 4, 2003, to inspect it for compliance with the statute and regulations.

17. On July 15, 2003, EPA issued a Notice of Warning to Respondent for violating FIFRA by using registered pesticides in a manner inconsistent with its labeling. The violations involved the application of pesticides without complying with several requirements of EPA's Worker Protection Standard ("WPS"), authorized by 7 U.S.C. section 136w(a)(1) and found at 40 C.F.R. part 170, which was required to be followed per the label directions.

18. The inspector again conducted an inspection at Respondent's farm with the consent of Respondent on August 12, 2004, to inspect it for compliance with the statute and regulations.

19. During both inspections workers and handlers, were present at Respondent's farm.

20. Each of the pesticides described below were used at Respondent's farm. Each of the pesticides described below is a registered pesticide and may only be used in accordance with label directions, including complying with the WPS codified at 40 C.F.R. part 170:

Flint, EPA Reg. No. 100-919;
Thiolux, EPA Reg. No. 100-835.

21. The WPS requires employers to display specific information about applications of pesticides when workers are at the farm for 30 days after pesticide applications. 40 C.F.R. sections 170.122 and 170.222.

22. The WPS requires employers to provide pesticide safety training to its workers in accordance with 40 C.F.R. section 170.130 and to its handlers in accordance with 40 C.F.R. section 170.230.

23. FIFRA section 12(a)(2)(G) prohibits the use of registered pesticides in a manner inconsistent with its labeling.

24. Each failure to follow the WPS requirements described in the counts below constitutes a use of a registered pesticide in a manner inconsistent with its labeling and each is a violation of FIFRA section 12(a)(2)(G).

COUNTS 1 and 2

25. On July 29, 2004, Respondent applied the pesticide Thiolux in the areas designated as "row/pattern 1-23" and "row/pattern 34-42."

26. On August 2, 2004, Respondent applied the pesticide Thiolux in the areas designated as "row/pattern 26-33" and "row/pattern 43-69."

27. On August 12, 2004, Respondent was not displaying specific information about the July 29th and the August 2nd applications of Thiolux (Counts 1 and 2) as required by the WPS requirement codified in 40 C.F.R. sections 170.122 and 170.222.

28. Since Respondent failed to display specific information about the July 29, 2004 and August 2, 2004 applications of the pesticide Thiolux on the areas described in paragraphs 25-26, each failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. These are two violations of FIFRA section 12(a)(2)(G).

COUNT 3

29. On August 2, 2004, Respondent applied the pesticide Flint in the area designated as "row/pattern 26-33."

30. On August 12, 2004, Respondent was not displaying specific information about the August 2nd application of Flint (Count 3) as required by the WPS requirement codified in 40 C.F.R. sections 170.122 and 170.222.

31. Since Respondent failed to display specific information about the August 2, 2004 application of the pesticide Flint on the area described in paragraph 29, this failure to comply with the WPS requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. This is one violation of FIFRA section 12(a)(2)(G).

COUNT 4

32. On August 12, 2004, an EPA inspector found that at least one of Respondent's workers was in the vineyard within 30 days of pesticide applications subject to WPS regulation.

33. 40 C.F.R. section 170.130 requires that workers shall be trained about pesticide safety before a worker enters any areas where pesticide applications covered by the WPS have occurred in the last 30 days, by either a certified applicator, a trainer of certified applicators, a person who completed an approved pesticide safety train-the-trainer program, or a person who satisfies the requirements of 40 C.F.R. section 171 or 40 C.F.R. section 170.230(c).

34. On August 12, 2004, the inspector determined that Respondent's workers had been in a field that was treated with pesticides and that the workers were not trained in pesticide safety by a certified applicator or other person meeting the requirements of 40 C.F.R. section 170.130(d).

35. Respondent failed to provide its workers with a pesticide safety trainer that was either a certified applicator, a trainer of certified applicators, a person who completed an approved pesticide safety train-the-trainer program, or a person who satisfies the requirements of 40 C.F.R. section 171 or 40 C.F.R. section 170.230(c), to train its workers about pesticide safety in accordance with 40 C.F.R. section 170.130(d). This failure to comply with the WPS pesticide safety training requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. This is one violation of FIFRA section 12(a)(2)(G).

COUNT 5

36. On August 12, 2004, an EPA inspector found that Respondent's handler applied pesticides subject to WPS regulation on July 29, 2004, and August 2, 2004.

37. 40 C.F.R. section 170.230 requires that handlers be trained about pesticide safety before the handler performs any pesticide handling tasks, by either a certified applicator, a trainer of certified applicators, or a person who completed an approved pesticide safety train-the-trainer program.

38. On August 12, 2004, the inspector determined that Respondent's handler had performed handling tasks and that the handler was not trained in pesticide safety by a certified applicator or other person meeting the requirements of 40 C.F.R. section 170.230(d).

39. Respondent failed to provide its handler with a pesticide safety trainer that was either a certified applicator, a trainer of certified applicators, or a person who completed an approved pesticide safety train-the-trainer program, to train its handlers about pesticide safety in accordance with 40 C.F.R. section 170.230(d). This failure to comply with the WPS pesticide

safety training requirement constitutes a use of a registered pesticide in a manner inconsistent with its labeling. This is one violation of FIFRA section 12(a)(2)(G).

PROPOSED CIVIL PENALTY

40. For private applicators or other persons, FIFRA authorizes the assessment of a civil penalty of up to \$1,200 for each offense of the Act and the Debt Collection Improvement Act of 1996. FIFRA requires EPA to consider the appropriateness of the penalty to the size of the business, the effect on the person's ability to continue in business, and the gravity of the violation. EPA has established policies that provide a rational and consistent method for applying statutory factors to the circumstances of specific cases. A narrative description of the reasoning behind the penalty proposed in this case is attached to this complaint, along with copies of the EPA policies. For the FIFRA violations alleged in this complaint, EPA proposes penalties of \$720 for each count, for a total penalty of \$3,600. The exact penalty amount for each count can be found in Complainant's Exhibit Number 1.

41. The ALJ is not bound by EPA's penalty policy or the penalty proposed by Complainant, and may assess a penalty above the proposed amount, up to the maximum amount authorized in the statute. For Five violations, the maximum would be \$6,000.

To discuss settlement or ask any questions you may have about this process, please contact Eduardo Quintana, Enforcement Attorney, at 1-800-227-8917; ext. 6924, or at the address below.

United States Environmental Protection Agency
Region 8, Office of Enforcement, Compliance and
Environmental Justice, Complainant
999 18th Street, Suite 300 (ENF-L)
Denver, CO 80202

Date: 3/14/05

By: Elisabeth Evans
Elisabeth Evans, Director
Technical Enforcement Program

Date: 3/14/05

By: Michael T. Risner
Michael T. Risner, Director
David J. Janik, Supervisory Enforcement Attorney
Legal Enforcement Program

Date: 3/9/2005

By: Eduardo Quintana
Eduardo Quintana, Enforcement Attorney
Legal Enforcement Program

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the COMPLAINT, AND NOTICE OF OPPORTUNITY FOR HEARING with Exhibits were hand-carried to the Regional Hearing Clerk, EPA Region VIII, 999 18th Street, Denver, Colorado, and that a true copy of the same with Exhibits and Enclosures was sent via Certified Mail to Respondent's registered agent to the following address:

Jeff Carr
Garfield Estates Vineyard and Winery
Mt. Garfield Winery Corp.
7891 E. 26th Ave.
Denver, CO 80238

March 16, 2005
Date

Judith M. Mc Ternan

Garfield Estates Vineyard & Winery

Penalty Calculation Narrative

1. To ensure a uniform and consistent enforcement response and application of the statutory penalty criteria in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the U.S. Environmental Protection Agency (EPA) developed the July 2, 1990 Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (1990 Policy) and the October 21, 1997, Worker Protection Standard Penalty Policy (1997 WPS Policy).
2. Garfield Estates Vineyard & Winery (Garfield Estates) is covered under FIFRA section 14(a)(2), i.e., a private applicator or other person not included in paragraph 1 [e.g., registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor].
3. According to the policies identified in paragraph 1, the appropriate enforcement response for a violation of FIFRA section 12(a)(2)(G), to use any pesticide in a manner inconsistent with its labeling, is a civil penalty. Persons covered under FIFRA 14(a)(2) may be assessed a civil penalty subsequent to receiving a written warning. Garfield Estates received a Notice of Warning for using registered pesticides in a manner inconsistent with their labeling on July 19, 2003.
4. The July 15, 2003, Notice of Warning identified the following violations:
 - 40 C.F.R. §170.120 (notice of the application was not displayed)
 - 40 C.F.R. §170.122 and 170.222 (failure to post specific information regarding applications)
 - 40 C.F.R. §§170.130 and 170.230 (failure to assure that workers and handlers have received safety training)
 - 40 C.F.R. §§170.135 and 170.235 (failure to post safety poster and emergency medical care information)
 - 40 C.F.R. §§170.150 and 170.250 (failure to provide decontamination supplies)
 - 40 C.F.R. §170.232 (failure to assure the handler had read the label or was informed of label requirements)
 - 40 C.F.R. §170.240 Employer failed to provide personal protective equipment specified.
5. Based on EPA's August 12, 2004, inspection, Garfield Estates is charged with violating FIFRA section 12(a)(2)(G) five times by failing to display required information about pesticides that had been applied within the last 30 days while workers and handlers were on the agricultural establishment [40 C.F.R. §§170.122 and 170.222], and failing to assure workers and handlers had been trained by a certified trainer [40 C.F.R. §§170.130 and 170.230].

6. The five violations were determined by considering each pesticide applied to a specific area on any particular day as a separate violation. For example, the August 2, 2004 application of the pesticides Thiolux and Flint is considered to be two separate violations since information for neither pesticide was posted. Also, workers and handlers had not been trained for the applications.

7. FIFRA section 14(a)(4) requires EPA to "consider the appropriateness of [a civil penalty] to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation."

8. Following the guidance in the policies, EPA calculates a proposed civil penalty using the following process. First, the gravity of the offense is identified using Attachment 2-B on the 1997 WPS Policy. Attachment 2-B identifies violations of FIFRA section 12(a)(2)(G), 40 C.F.R. §§170.122 and 170.222, as gravity level 2, and violations of FIFRA section 12(a)(2)(G), 40 C.F.R. §§170.130 and 170.230 as gravity level 1.

9. Second, according to the policies, EPA determined the size of the business category for respondent. The penalty for Garfield Estates has been calculated using the Category I size of business (gross revenues greater than \$200,000) with the understanding that the proposed penalty would be recalculated if information becomes available that shows this assumption to be incorrect.

10. Third, EPA used the above gravity and size of business components and the Civil Penalty Matrix for FIFRA section 14(a)(2) violations on page 19 of the 1990 Policy to determine the dollar amount of the proposed penalty. Violations with level 1 or 2 gravity and in Business Category I are assessed a penalty of \$1,200 per violation (the penalty amounts shown in the 1990 Civil Penalty Matrix have been increased by the Debt Collection Improvement Act of 1996 with the most recent adjustment to \$1,200 becoming effective March 15, 2004).

11. The 1997 WPS Policy then directs that the actual circumstances of the violation be considered using gravity adjustment criteria listed on page 9 of that document. The penalty amounts determined from the matrix can be adjusted either upward or downward depending on the specifics of the case known to EPA at the time of the penalty calculation. The following gravity adjustment values were used to evaluate Garfield Estates' violations of FIFRA section 12(a)(2)(G) [40 C.F.R. §§170.122 and 170.222, 40 C.F.R. §§170.130 and 170.230]:

- (a) The pesticides that are known to have been applied by Garfield Estates were assigned a value of 1 for toxicity using the 1997 WPS Policy:

Flint, EPA registration number 100-919; (Caution)

Thiolux, EPA registration number 100-835; (Caution)

- (b) The human exposure adjustments were assigned a value of 1 because we have no information as to whether agricultural employees were exposed.
- (c) The human injury adjustments were assigned a value of 0 since no injuries were known to have occurred as a result of Garfield Estates' failure to post application information or from its failure to train workers and handlers.
- (d) Region 8 has no record of previous FIFRA violations in which a Civil Complaint was issued to Garfield Estates during the past five years and, therefore, assigned a value of 0 for this adjustment.
- (e) These violations by Garfield Estates are considered by EPA to have been the result of negligence, since a Notice of Warning had been issued for similar violations in 2003. As such, this adjustment is assigned a value of 2.
- (f) The above factors resulted in a total gravity adjustment value of 4 for those involving the failure to posting applications of Thiolux and Flint, and a value of 4 for failure to train workers and handlers.

12. Using a Gravity Adjustment Value of 4, Table in Appendix C of the 1990 Policy sets a penalty adjustment of -40%, resulting in a penalty of \$720 for each of the three counts involving posting application information involving Thiolux and Flint. A Gravity Adjustment Value of 4 results in a penalty adjustment of -40% and penalty of \$720 for each of the two counts associated with workers and handlers not being trained.

13. Finally, EPA attempts to take into consideration what effect the total calculated penalty of \$3,600 would have on the ability of Garfield Estates to continue to operate. However, based on the limited financial data available, no adjustment to the proposed penalty was considered warranted at this time. Adjustments of the proposed penalty can be made at a later date should information warranting such a change become available.

14. In summary, EPA arrived at a penalty of \$3,600 for Garfield Estates for three counts of violating FIFRA section 12(a)(2)(G) and 40 C.F.R. §§170.122 and 170.222 by failing to display required information about all pesticides applied with the last 30 days while workers were on the agricultural establishment, and for two counts of violating 40 C.F.R. §§170.130 and 170.230 by failing to assure workers and handlers were properly trained. This penalty was arrived at by considering all FIFRA section 14(a)(4) penalty criteria through the use of the 1990 Policy and the 1997 WPS Policy.

Prepared by: David Golden

Date: March 8, 2005

David Golden

3.8.5

FIFRA PENALTY CALCULATION WORKSHEET

Respondent: Garfield Estates Vineyard & Winery
3572 G Road
Palisade, CO 81526

Prepared by: David Golden *David Golden*
Date: March 8, 2005

Appendix A

1. Statutory violation
2. FTTS code

Attachment 2A

3. Gravity level

Table 2

4. Violator category: §14(a)(1) or §14(a)(2)
5. Size of business category

Table 1

6. Base penalty
(Includes a 10% increase in accordance with the Civil Monetary penalty Inflation Adjustment Rule of March 15, 2004.)
7. Gravity adjustments
 - a. pesticide toxicity
 - b. human exposure
 - c. human injury
 - d. environmental harm
 - e. compliance history
 - f. culpability
 - g. total gravity adjustment value

Table 3

- h. percent adjustment
- i. dollar adjustment
8. Base penalty after adjustments

3 Counts	2 Counts
§12(a)(2)(G)	§12(a)(2)(G)
2GH	2GJ
2	2
§14(a)(2)	§14(a)(2)
1	1
\$1,200 per count	\$1,200 per count
1	1
1	1
0	0
no value	no value
0	0
2	2
4	4
- 40%	- 40%
- \$480	- \$480
\$720 per count	\$720 per count
\$3,600	
\$3,600	

9. Total proposed penalty

10. Ability to Pay:

develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input to the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. This rule does not impose any enforceable duties on these entities. Instead, it merely revises the procedural rules governing EPA's administrative enforcement proceedings.

F. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the E.O. 13045 because it is not "economically significant" as defined in E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

G. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the

development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 22

Environment protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Hazardous waste, Penalties, Pesticides and pests, Poison prevention, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: June 30, 1999.

Carol M. Browner,
Administrator.

Therefore, 40 CFR part 22 is revised to read as follows:

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES, ISSUANCE OF COMPLIANCE OR CORRECTIVE ACTION ORDERS, AND THE REVOCATION, TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

Sec.

- 22.1 Scope of this part.
- 22.2 Use of number and gender.
- 22.3 Definitions.
- 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
- 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
- 22.6 Filing and service of rulings, orders and decisions.
- 22.7 Computation and extension of time.
- 22.8 Ex parte discussion of proceeding.
- 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.

Subpart F—Appeals and Administrative Review

- 22.29 Appeal from or review of interlocutory orders or rulings.
- 22.30 Appeal from or review of initial decision.

1st Page Only

**ENFORCEMENT RESPONSE POLICY
FOR THE
FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)**

**Office of Compliance Monitoring
Office of Pesticides and Toxic Substances
U.S. Environmental Protection Agency**

July 2, 1990

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460



1st page only

OCT 21 1997

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: FIFRA Worker Protection Standard - Enforcement Interim Final

FROM: Jesse Baskerville, Director
Toxics and Pesticides Enforcement Division
Office of Regulatory Enforcement

Jesse Baskerville

TO: Addressees (See below)

I am pleased to announce the completion of the Interim Final Penalty Policy for the FIFRA Worker Protection Standard (WPS). This document has been a work in progress since I distributed the DRAFT WPS Enforcement Response Policy for comments on December 31, 1996. Your responses and comments received were comprehensive in scope, and I wish to thank everyone who took the time to work with the TPED WPS team throughout this year with the development of this document. Since TPED first released this draft document in 1996, we have had the experience of several actions by the regions, responding to regions, states and industry compliance and enforcement, visiting regions and other sites to discuss WPS and enforcement, and litigating the DuPont WPS misbranding case before ALJ Kuhlman.

The first noticeable difference you will find with the INTERIM FINAL is that its name has been changed. Since this document is intended to be an appendix to the 1990 FIFRA ENFORCEMENT RESPONSE POLICY (ERP), we felt that the title of this document should not be in conflict or create confusion with the FIFRA ERP. Also, since this document has not yet undergone a full "road" test with the States and Regions, we are intending the document to be in interim state for approximately one year from the date of this memorandum.

During this interim stage, I am requesting that you provide TPED with your comments, issues, problems, or concerns regarding the substance of application of the WPS Penalty Policy. In addition, as you go through the year, we also ask that you provide TPED with examples of real-life scenarios and experiences that can be shared with other Regions and offices. One year from now, TPED will review all the information that has been collected and will reevaluate the interim policy. TPED will work to improve and enhance this document and reissue it as a FINAL penalty policy. It is my goal to make this document one of the best enforcement tools a case development officer/attorney team can have.



U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance and tools to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Hotlines, Helplines and Clearinghouses

EPA sponsors approximately 89 free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements.

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers: <http://www.epa.gov/clearinghouse>

Pollution Prevention Clearinghouse
<http://www.epa.gov/opptintr/library/ppicindex.htm>

EPA's Small Business Ombudsman Hotline can provide a list of all the hot lines and assist in determining the hotline best meeting your needs:
(800) 368-5888

Emergency Planning and Community Right-To-Know Act
(800) 424-9346

National Response Center (to report oil and hazardous substance spills)
(800) 424-8802

Toxics Substances and Asbestos Information
(202) 554-1404

Safe Drinking Water
(800) 426-4791

Stratospheric Ozone and Refrigerants Information
(800) 296-1996

Clean Air Technology Center
(919) 541-0800

Wetlands Helpline
(800) 832-7828

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page
<http://www.epa.gov>

Small Business Assistance Program
<http://www.epa.gov/ttn/sbap>

Office of Enforcement and Compliance Assurance
<http://www.epa.gov/compliance>

Compliance Assistance Home Page
<http://www.epa.gov/compliance/assistance>

Office of Regulatory Enforcement
<http://www.epa.gov/compliance/civil/index.html>

Office of Site Remediation Enforcement
<http://www.epa.gov/compliance/cleanup>

Innovative Programs for Environmental Performance
<http://www.epa.gov/partners>

Small Business Ombudsman
www.sba.gov/ombudsman